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2015 APR 16 PM 4 35

U.S. DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

**FILED UNDER SEAL**

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 13-10200-GAO
	)	
DZHOKHAR TSARNAEV	)	

**DEFENDANT'S LIST OF MITIGATING FACTORS AND  
REQUEST REGARDING PRELIMINARY INSTRUCTIONS**

As requested by the Court, the defendant submits herewith a set of mitigating factors on which he currently expects to rely. He expects to further revise this list to conform to the evidence, and to identify certain mitigating factors with greater specificity, after the close of his case in mitigation.

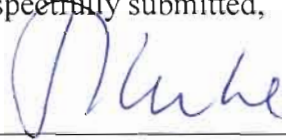
However, while he generally agrees with the Court's expressed intention to use Judge Sand's sentencing instructions, the defendant requests that the Court not provide lists of aggravating or mitigating factors to the jury as part of the introductory instructions at the start of the sentencing phase. Under the circumstances of this case, he submits that reading to the jury all of the statutory and nonstatutory aggravating factors, along with a preliminary list of mitigating factors, would be unbalanced and unfair. The reason for this is that the jury has already heard, during the first phase of the trial, almost all of the evidence that supports the government's aggravating factors, but almost none of the evidence supporting the defendant's mitigating factors. To begin this next stage by

setting already-proven aggravating factors against the defendant's mere allegations would tend promote prejudgment.

Moreover, there is no practical need for the Court to identify for the jury in advance the aggravating (or mitigating) factors that it will be asked to consider. Most of them are straightforward factual propositions, and are based on evidence that the jury will have no difficulty recalling when it receives the Court's final oral and written sentencing instructions. A lengthy list of threshold, statutory and nonstatutory aggravating factors is not needed to focus the jury's attention on the government's remaining evidence.

For the foregoing reasons, the defendant requests that the Court omit from its preliminary sentencing phase instructions any list of alleged aggravating and mitigating factors.

Respectfully submitted,



David I. Bruck  
Judy Clarke  
Miriam Conrad  
William Fick  
Timothy Watkins

**Certificate of Service**

I hereby certify that this document was served upon opposing counsel by email this date.

